THE HONOURABLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No. 19713 of 1998

Date: 20.04.2007

Between:

Dr.B.Rama Rao.

..Petitioner.

and

The Commissioner,
Municipal Corporation of Hyderabad,
Hyderabad, and another.

..Respondents

THE HON'BLE SRI JUSTICE TAMADA GOPALAKRISHNA

WRIT PETITION NO. 19713 OF 1998

ORDER:

This writ petition is filed for issuance of Writ of Mandamus declaring the notice No.9, dated 8.07.1998 passed by the 1st respondent and the inaction of the respondents in issuing the revised sanction plan in terms of G.O.Rt.No.358 MA, dated 5.5.1998 as illegal and arbitrary and consequently direct the respondents to issue the same forthwith and not to interfere with the construction undertaken in terms of the G.O.

2. The case of the petitioner is that he is the owner and possessor of the premises bearing municipal No.5-8-8, situated at Nampally Station Road, Hyderabad. He submitted an application to the first respondent-Corporation seeking demolition of existing structure and permission for construction of a commercial complex. The Corporation vide permit No.371/96, dated 30.08.1996 granted permission for construction of the proposed commercial complex. But however, while granting the said permission, the respondents-Corporation insisted the petitioner for leaving additional set-back to the extent of about 130 sq. meters facing the Nampally Station Road, to be utilized for road widening. Thereafter, the petitioner submitted an application on 26.08.1996 seeking exemption in the Zonal regulations relating to building set-back to some extent and also the floor space index to the authorities concerned. The said application was forwarded to the first

respondent for remarks. The first respondent after considering the plan, submitted his recommendation in favour of the petitioner vide his letter dated 27.11.1996. While so, the Municipal Corporation initiated proceedings against the petitioner alleging violation of sanction plan. Hence, the petitioner filed W.P.No.5523 of 1997 before this Court, and the same was disposed of by this Court by order dated 20.03.1997 directing the State Government to consider the application submitted by the petitioner for exemption within a period of 10 days and not to demolish the structures existing therein. Thereafter, the State Government considered the petitioner's application for relaxation and issued Memo dated 21.8.1997 directing the first respondent to calculate the necessary penal amount for the proposed relaxation duly deducting the same from the cost of the land affected in road widening. Thereafter, the first respondent prepared a statement for the penal amount to be charged and also calculated the value of the land affected in road widening. It is the grievance of the petitioner that the Government, so far, has not paid the balance market value due to him.

Thereafter, the Government issued G.O.Rt.No.358 MA, dt.5.5.1998, according permission/relaxation in the floor space index and set-backs. In terms of the said relaxation, the petitioner once again submitted the revised plan to the Corporation, and as per the redetermination of necessary fee by the Corporation, he paid a sum of Rs.33,563/- on 29.05.1998. Since the Corporation has taken unduly long period for releasing the revised sanction plan, the petitioner submitted a representation dated 3.7.1997 requesting the first respondent to process his application for revised plan in terms of Government Order, but no action has been taken so far.

3. The learned counsel for the petitioner submitted that as the application of the petitioner for revised sanction plan is pending before

the competent authority and as it is in consonance with the terms of G.O.Rt.No.358, this Court directed the competent authority to consider his case in terms of the said G.O. and pass appropriate orders.

4. On the other hand, the learned Standing Counsel for the Hyderabad Municipal Corporation disputed the same contending that G.O.Rt.No.358 is no more in existence having regard to the fact that the said G.O. was quashed by this Court in W.P.No.25011 of 1998 dated 25.01.2002. However, both the counsel agreed that pursuant to the quashing of the said G.O. the Government enacted Act 6 of 2003.

5. Under the above circumstances, the petitioner is directed to submit an application to the competent authority to consider his case for regularization of buildings in question in terms of the said Act 6 of 2003 by taking into consideration the penal amounts already paid by the petitioner along with the application dated 29.5.1998. The said consideration shall be done within a period of six weeks from the date of receipt of a copy of this order.

6. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

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(GOPALA KRISHNA TAMADA,J)

20.04.2007
v v